

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF: 02KD-236

KAUAI

Amend Prior Action of May 24, 2004, Agenda Item D-5, Request by the USA, Department of the Navy, for Addition of 270 Acres to General Lease No. S-3852 and for Non-Exclusive Agricultural Preservation/Restrictive Use Easement of 5,371 Acres on Lands Adjacent to the Pacific Missile Range Facility, Waimea, Kekaha, Kauai, Tax Map Key: (4) 1-2-02: Por. 1

At its meeting on May 24, 2004, under agenda item D-5, the Board approved, as amended, among other things, the addition of 270 acres of State land to the operation of General Lease No. S-3852 (GLS-3852) issued to the USA, Department of the Navy.

Most of the additional acreage is adjacent to the Navy's Pacific Missile Range Facility (PMRF) and will serve as additional buffer area for the facility. The additional buffer area would bring PMRF into compliance with new Federal Anti-Terrorism/Force Protection (ATFP) guidelines that established set back distance for improvements located on military bases from the bases' perimeters.

Other portions of the additional acreage include the locations of the Mana shaft, which is the potable water source for PMRF, and the Kawaiele Pump and Drainage Station, which prevent most of the Mana Plain and PMRF from returning to its natural state as a wetland area. Prior to its closure, the former Kekaha Sugar Company operated and maintained both the Mana Shaft and Kawaiele Pump and Drainage Station at its own expense.

In support of PMRF's continuance as a missile evaluation and testing range, the Navy will operate and maintain the Mana Shaft at its own expense and will pay its share of the cost to operate and maintain the Kawaiele Pump and Drainage Station. In order for the Navy to obtain continuous funding to cover its expenses for these items it must have not less than a long-term interest in the property responsible for the ongoing expenses. Accordingly, adding these areas to the operation of GLS-3852 was in order.

Approximately 60 acres of the addition to GLS-3852 were withdrawn from Governor's Executive Order No. 4007, issued to the Agribusiness Development Corporation, by Governor's Executive Order No. 4165, dated July 20, 2006. Pursuant to Section 171-11, the legislature has the right to disapprove the issuance of a governor's executive

order by two-thirds vote of either the House of Representatives or the Senate or by the majority vote of both in any regular or special session next following the date of the withdrawal. Therefore, the legislative right to disapprove Governor's Executive Order No. 4165 that withdrew 60 acres from Governor's Executive Order No. 4007 will not expire until May 2007.

The 0.026-acre Mana Shaft site is a portion of the 60 acres that was withdrawn from Governor's Executive Order No. 4007 by Governor's Executive Order No. 4165 and cannot be added to General Lease No. S-3852 until May 2007. During the interim, Revocable Permit No. S-7371 authorizes the Navy's occupancy of the Mana Shaft site.

The remainder of the acreage to be added to GLS-3852, which includes the Kawaiele Pump and Drainage Station, is unencumbered State land, and therefore, not subject to legislative disapproval. However, according to the Department of the Attorney General the Board approved the addition of all 270 acres to the operation of GLS-3852 at its May 24, 2004 meeting, which delays the addition of the remainder of the acreage to not earlier than May 2007 and corresponding delay of the Navy's payment for its share of the cost to operate and maintain the Kawaiele Pump and Drainage Station.

To assist the Navy in its timely receipt of the funds needed to pay its share of the cost to operate and maintain the Kawaiele Pump and Drainage Station, staff recommends that agenda item D-5 of the Board's May 24, 2004 meeting be amended as follows:

1. Delete all reference to 270 acres and replace with 276 acres, more or less.
2. Delete all reference to 64 acres and replace with 60 acres, more or less.
3. Page 8, delete RECOMMENDATION 3 and replace with: Amend General Lease No. S-3852 to include the addition of 215 acres to its operation for purposes of 1) complying with ATFP guidelines regarding setback distance for military bases, 2) relocating the existing guard shack and pass and ID office to comply with ATFP guidelines, and 3) facilitating the operation and maintenance of the Kawaiele Pump and Drainage Station to protect PMRF from flooding, subject to:
  - A. Review and approval by the Department of the Attorney General.
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Page 9, add RECOMMENDATION 5: Provided that the legislature does not disapprove Governor's Executive Order No. 4165 prior to the expiration of its right to disapprove the said executive order at the adjournment of the 2007 legislative session, then further amend General Lease No. S-3852 to include the addition of the 60 acres withdrawn from Governor's Executive Order No. 4007 by Governor's Executive Order No. 4165 for purposes of 1) complying with ATFP

guidelines regarding set back distance for military bases, and 2) securing an existing potable water source, subject to:

- A. Review and approval by the Department of the Attorney General.
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
2 Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson